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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

**STEVE GALLION, INDIVIDUALLY
AND ON BEHALF OF ALL OTHERS
SIMILARLY SITUATED,**

Plaintiff,

v.

MEAL SYSTEMS, LLC,

Defendant.

Case No.:

CLASS ACTION

**COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF PURSUANT TO
THE TELEPHONE CONSUMER
PROTECTION ACT, 47 U.S.C. § 227, ET
SEQ.**

JURY TRIAL DEMANDED

INTRODUCTION

1. STEVE GALLION ("Plaintiff") bring this Class Action Complaint for damages, injunctive relief, and any other available legal or equitable remedies, resulting from the illegal actions of MEAL SYSTEMS, LLC ("Defendant"), in negligently contacting Plaintiff on Plaintiff's cellular telephone, in violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227 et seq., ("TCPA"), thereby invading Plaintiff's privacy. Plaintiff alleges as follows upon personal knowledge as to himself and his own acts and experiences, and, as to all other matters, upon information and belief, including investigation conducted by their attorneys.
2. The TCPA was designed to prevent calls and messages like the ones described within this complaint, and to protect the privacy of citizens like Plaintiff. "Voluminous consumer complaints about abuses of telephone technology – for example, computerized calls dispatched to private homes – prompted Congress to pass the TCPA." *Mims v. Arrow*

1 *Fin. Servs., LLC*, 132 S. Ct. 740, 744 (2012).

- 2 3. In enacting the TCPA, Congress intended to give consumers a choice as to how creditors
3 and telemarketers may call them, and made specific findings that “[t]echnologies that
4 might allow consumers to avoid receiving such calls are not universally available, are
5 costly, are unlikely to be enforced, or place an inordinate burden on the consumer.
6 TCPA, Pub.L. No. 102–243, § 11. Toward this end, Congress found that

- 7 4.
8 [b]anning such automated or prerecorded telephone calls to the home, except
9 when the receiving party consents to receiving the call or when such calls are
10 necessary in an emergency situation affecting the health and safety of the
consumer, is the only effective means of protecting telephone consumers from
this nuisance and privacy invasion.

11 *Id.* at § 12; see also *Martin v. Leading Edge Recovery Solutions, LLC*, 2012 WL
12 3292838, at* 4 (N.D.Ill. Aug. 10, 2012) (citing Congressional findings on TCPA’s
13 purpose).

- 14
15 5. Congress also specifically found that “the evidence presented to the Congress indicates
16 that automated or prerecorded calls are a nuisance and an invasion of privacy, regardless
17 of the type of call....” *Id.* at §§ 12-13. See also, *Mims*, 132 S. Ct. at 744.
18 6. As Judge Easterbrook of the Seventh Circuit recently explained in a TCPA case
19 regarding calls to a non-debtor similar to this one:

20 The Telephone Consumer Protection Act ... is well known for its provisions
21 limiting junk-fax transmissions. A less-litigated part of the Act curtails the use of
22 automated dialers and prerecorded messages to cell phones, whose subscribers
23 often are billed by the minute as soon as the call is answered—and routing a call
24 to voicemail counts as answering the call. An automated call to a landline phone
can be an annoyance; an automated call to a cell phone adds expense to
annoyance.

25 *Soppet v. Enhanced Recovery Co., LLC*, 679 F.3d 637, 638 (7th Cir. 2012).

- 26 7. The Ninth Circuit recently affirmed certification of a TCPA class case remarkably similar
27 to this one in *Meyer v. Portfolio Recovery Associates, LLC*, __ F.3d__, 2012 WL
28 4840814 (9th Cir. Oct. 12, 2012).

JURISDICTION AND VENUE

8. This Court has federal question jurisdiction because this case arises out of violation of federal law. 47 U.S.C. §227(b); *Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740 (2012).

9. Venue is proper in the United States District Court for the Central District of California pursuant to 18 U.S.C. § 1391(b) and 1441(a) because Defendant is subject to personal jurisdiction in the County of Los Angeles, State of California.

PARTIES

10. Plaintiff is, and at all times mentioned herein was, a citizen and resident of the State of California. Plaintiff is, and at all times mentioned herein was, a “person” as defined by 47 U.S.C. § 153 (10).

11. Plaintiff is informed and believes, and thereon alleges, that Defendant is, and at all times mentioned herein was, a corporation whose State of Incorporation and principal place of business is in the State of California. Defendant, is and at all times mentioned herein was, a corporation and is a “person,” as defined by 47 U.S.C. § 153 (10). Defendant provides personal home and bath products to hundreds of thousands of consumers. Plaintiff alleges that at all times relevant herein Defendant conducted business in the State of California and in the County of San Bernardino, and within this judicial district.

FACTUAL ALLEGATIONS

12. At all times relevant, Plaintiff was a citizen of the County of San Bernardino, State of California. Plaintiff is, and at all times mentioned herein was, a “person” as defined by 47 U.S.C. § 153 (10).

13. Defendant is, and at all times mentioned herein was, a corporation and a “person,” as defined by 47 U.S.C. § 153 (10).

14. At all times relevant Defendant conducted business in the State of California and in the County of San Bernardino, within this judicial district.

15. In or around December of 2015, Defendant began to send a campaign of text messages to Plaintiff’s telephone number ending in -6963.

1 16. Defendant began to use Plaintiff's cellular telephone for the purpose of sending Plaintiff
2 spam advertisements and/or promotional offers, via text messages.

3 17. On or about December 9, 2015, at around 1:50 p.m. Plaintiff received a text message
4 from Defendant that read:

5 EXCLUSIVE OFFER: \$125 off + 5 days of FREE FOOD! Hurry, order
6 now: PersonalTrainerFood.com/m/meals.php
7 Code: JINGLE125
8 Valid on 2meals/day
9 Rply STOP

10 18. Then, two minutes later at 1:52 p.m., Plaintiff received another text message that read
11 exactly the same as the text message in paragraph 17.

12 19. Again at 2:04 p.m., twelve minutes later, Plaintiff received another text message that read
13 exactly the same as the text message in paragraph 17.

14 20. Further, two minutes after at 2:06 p.m., Plaintiff received another text message that read
15 exactly the same as the text message in paragraph 17.

16 21. Then, three minutes after at 2:09 p.m., Plaintiff received another text message that read
17 exactly the same as the text message in paragraph 17.

18 22. Again, at 2:14 p.m., 5 minutes later, Plaintiff received another text message that read
19 exactly the same as the text message in paragraph 17.

20 23. Plaintiff received another text message that read the same as the text message in
21 paragraph 17 three minutes later at 2:17 p.m.

22 24. Plaintiff then received another text message that read the same as the text message in
23 paragraph 17 another three minutes after at 2:20 p.m.

24 25. Frustrated, Plaintiff responded by texting back "Stop" at 2:24 p.m.

25 26. Though Plaintiff had not given his prior express consent to be contacted by ATDS by
26 Defendant, by way of Plaintiff's text messages to Defendant, Plaintiff had now
27 withdrawn any consent Defendant might have believed Defendant had prior to that point.

28 27. Immediately after, Defendant sent a text message to Plaintiff that stated:
Songwhale: You have been opted out of all campaigns on this short
code.

1 28. Despite this Defendant sent another text message that read the same as the text message
2 referenced in paragraph 17 four minutes later at 2:28 p.m.

3 29. Defendant then sent another text message that read the same as the text message
4 referenced in paragraph 26 two minutes later at 2:30 p.m.

5 30. Plaintiff responded by sending another text message at 2:30 p.m. that stated "Stop."

6 31. Immediately after at 2:30 p.m. Defendant sent a text message to Plaintiff that read the
7 same as the text message referenced in paragraph 26.

8 32. Then, right after at 2:30 p.m. Plaintiff received another text message that read the same as
9 the text message referenced in paragraph 17.

10 33. Plaintiff responded at 2:31 p.m. that stated "STOP."

11 34. Defendant responded at 2:31 p.m. with another text message that read the same as the
12 text message referenced in paragraph 26.

13 35. Then again at 2:34 p.m., three minutes later, Defendant sent another text message that
14 read the same as the text message referenced in paragraph 26.

15 36. One minute later at 2:35 p.m., Defendant sent Plaintiff another text message that read the
16 same as the text message reference in paragraph 26.

17 37. These text messages placed to Plaintiff's cellular telephone were placed via an
18 "automatic telephone dialing system," ("ATDS") as defined by 47 U.S.C. § 227 (a)(1) as
19 prohibited by 47 U.S.C. § 227 (b)(1)(A).

20 38. The telephone number that Defendant, or its agent called was assigned to a cellular
21 telephone service for which Plaintiff incurs a charge for incoming calls pursuant to 47
22 U.S.C. § 227 (b)(1).

23 39. These telephone calls constituted calls that were not for emergency purposes as defined
24 by 47 U.S.C. § 227 (b)(1)(A)(i).

25 40. As of December 9, 2015, Plaintiff did not provide Defendant or its agents with prior
26 express consent to receive unsolicited text messages, pursuant to 47 U.S.C. § 227
27 (b)(1)(A).

28 41. These telephone calls by Defendant, or its agents, violated 47 U.S.C. § 227(b)(1).

CLASS ACTION ALLEGATIONS

42. Plaintiff brings this action on behalf of himself and on behalf of and all others similarly situated (“the Class”).

43. Plaintiff represents, and is a member of, the Class, consisting of all persons within the United States who received any unsolicited text messages from Defendant which text message was not made for emergency purposes or with the recipient’s prior express consent within the four years prior to the filing of this Complaint.

44. Defendant and its employees or agents are excluded from the Class. Plaintiff does not know the number of members in the Class, but believes the Class members number in the hundreds of thousands, if not more. Thus, this matter should be certified as a Class action to assist in the expeditious litigation of this matter.

45. Plaintiff and members of the Class were harmed by the acts of Defendant in at least the following ways: Defendant, either directly or through its agents, illegally contacted Plaintiff and the Class members via their cellular telephones by using marketing and text messages, thereby causing Plaintiff and the Class members to incur certain cellular telephone charges or reduce cellular telephone time for which Plaintiff and the Class members previously paid, and invading the privacy of said Plaintiff and the Class members. Plaintiff and the Class members were damaged thereby.

46. This suit seeks only damages and injunctive relief for recovery of economic injury on behalf of the Class, and it expressly is not intended to request any recovery for personal injury and claims related thereto. Plaintiff reserves the right to expand the Class definition to seek recovery on behalf of additional persons as warranted as facts are learned in further investigation and discovery.

47. The joinder of the Class members is impractical and the disposition of their claims in the Class action will provide substantial benefits both to the parties and to the court. The Class can be identified through Defendant’s records or Defendant’s agents’ records.

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1 48. There is a well-defined community of interest in the questions of law and fact involved
2 affecting the parties to be represented. The questions of law and fact to the Class
3 predominate over questions which may affect individual Class members, including the
4 following:

- 5 a) Whether, within the four years prior to the filing of this Complaint, Defendant or
6 its agents sent any text messages to the Class (other than a message made for
7 emergency purposes or made with the prior express consent of the called party) to
8 a Class member using any automatic dialing system to any telephone number
9 assigned to a cellular phone service;
- 10 b) Whether Plaintiff and the Class members were damaged thereby, and the extent of
11 damages for such violation; and
- 12 c) Whether Defendant and its agents should be enjoined from engaging in such
13 conduct in the future.

14 49. As a person that received at least one marketing and text message without Plaintiff's prior
15 express consent, Plaintiff is asserting claims that are typical of the Class. Plaintiff will
16 fairly and adequately represent and protect the interests of the Class in that Plaintiff has
17 no interests antagonistic to any member of the Class.

18 50. Plaintiff and the members of the Class have all suffered irreparable harm as a result of the
19 Defendant's unlawful and wrongful conduct. Absent a class action, the Class will
20 continue to face the potential for irreparable harm. In addition, these violations of law
21 will be allowed to proceed without remedy and Defendant will likely continue such
22 illegal conduct. Because of the size of the individual Class member's claims, few, if any,
23 Class members could afford to seek legal redress for the wrongs complained of herein.

24 51. Plaintiff has retained counsel experienced in handling class action claims and claims
25 involving violations of the Telephone Consumer Protection Act.

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1 52. A class action is a superior method for the fair and efficient adjudication of this
2 controversy. Class-wide damages are essential to induce Defendant to comply with
3 federal and California law. The interest of Class members in individually controlling the
4 prosecution of separate claims against Defendant is small because the maximum statutory
5 damages in an individual action for violation of privacy are minimal. Management of
6 these claims is likely to present significantly fewer difficulties than those presented in
7 many class claims.

8 53. Defendant has acted on grounds generally applicable to the Class, thereby making
9 appropriate final injunctive relief and corresponding declaratory relief with respect to the
10 Class as a whole.

11 **FIRST CAUSE OF ACTION**

12 **NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT**

13 **47 U.S.C. § 227 ET SEQ.**

14 54. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as
15 though fully stated herein.

16 55. The foregoing acts and omissions of Defendant constitute numerous and multiple
17 negligent violations of the TCPA, including but not limited to each and every one of the
18 above-cited provisions of 47 U.S.C. § 227 et seq.

19 56. As a result of Defendant's negligent violations of 47 U.S.C. § 227 et seq, Plaintiff and
20 The Class are entitled to an award of \$500.00 in statutory damages, for each and every
21 violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

22 57. Plaintiff and the Class are also entitled to and seek injunctive relief prohibiting such
23 conduct in the future.

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SECOND CAUSE OF ACTION

KNOWING AND/OR WILLFUL VIOLATIONS OF THE

TELEPHONE CONSUMER PROTECTION ACT

47 U.S.C. § 227 ET SEQ.

58. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

59. The foregoing acts and omissions of Defendant constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above-cited provisions of 47 U.S.C. § 227 et seq.

60. As a result of Defendant's knowing and/or willful violations of 47 U.S.C. § 227 et seq, Plaintiff and The Class are entitled to an award of \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

61. Plaintiff and the Class are also entitled to and seek injunctive relief prohibiting such conduct in the future.

PRAYER FOR RELIEF

Wherefore, Plaintiff respectfully requests the Court grant Plaintiff, and The Class members the following relief against Defendant:

FIRST CAUSE OF ACTION FOR NEGLIGENT VIOLATION OF

THE TCPA, 47 U.S.C. § 227 ET SEQ.

- As a result of Defendant's negligent violations of 47 U.S.C. § 227(b)(1), Plaintiff seeks for himself and each Class member \$500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).
- Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting such conduct in the future.
- Any other relief the Court may deem just and proper.

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**SECOND CAUSE OF ACTION FOR NEGLIGENT VIOLATION OF
THE TCPA, 47 U.S.C. § 227 ET SEQ.**

- As a result of Defendant's negligent violations of 47 U.S.C. § 227(b)(1), Plaintiff seeks for himself and each Class member \$1500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).
- Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting such conduct in the future.
- Any other relief the Court may deem just and proper.

TRIAL BY JURY

62. Pursuant to the seventh amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Dated: January 6, 2016

Respectfully submitted,

THE LAW OFFICES OF TODD M. FRIEDMAN, PC

By: /s Todd M. Friedman
TODD M. FRIEDMAN, ESQ.
ATTORNEY FOR PLAINTIFF

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PROOF OF SERVICE